

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Petition of the	:	
	:	
AIR CARRIER ASSOCIATION OF AMERICA :		Docket OST-04-
	:	
To Block Transfer of High Density Slots	:	
	:	
Under 14 C.F.R. § 11.25 and 49 U.S.C. § 41712	:	
	:	

**PETITION OF THE AIR CARRIER ASSOCIATION OF AMERICA
TO SUSPEND THE TRANSFER OR LEASE OF SLOTS
AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT**

Communications with respect to this document should be addressed to:

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July 7, 2004

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Summary

The Air Carrier Association of America (“ACAA”) hereby asks the Department of Transportation (“Department”) and the Federal Aviation Administration (“FAA”), under 49 U.S.C. § 41712, 14 C.F.R., Parts 11 and 93, and 14 C.F.R. § 302.409, to suspend any proposed sale or lease (or extension of existing lease agreements) by Northwest Airlines¹ (“Northwest”) of approximately 24 slots at Ronald Reagan Washington National Airport (“DCA”) to US Airways or any other carrier.² The Department should also institute an overhaul of the entire buy/sell rule.

¹ Based upon available information, Northwest holds approximately 70 DCA slots and leases approximately 40% of those slots to other carriers.

² Northwest had been leasing these slots to its codeshare partner, Delta Air Lines. It is our understanding that the slots will now be provided to a different legacy carrier.

The rules should require that the FAA (in a public docket) and all parties be notified of possible sales/leases and that all details concerning slot transactions are fully disclosed. Moreover, the Department should immediately investigate (under 49 U.S.C. § 41712) the slot transactions between dominant carriers including the motives and processes utilized by these carriers to expand their control over DCA and LaGuardia Airport (“LGA”) and to block low-fare competition at these airports. Until the Department has completed its review of these issues, it should suspend all DCA and LGA slot leases or sales among the largest six carriers.

Background

Nineteen years ago, a few large carriers were given the right to control slots at the high-density airports by the FAA’s buy/sell high density slot regulations. Under 14 CFR § 93.221, an air carrier may sell or lease slots allocated to it by the FAA. At the time the rule was issued, the FAA recognized the competitive significance of slots and sought a way to somewhat open a very closed competitive environment. Unfortunately, whatever might have been its original intent, the buy/sell rule has become but one more barrier to competition to the disadvantage of consumers traveling in government controlled high fare markets. Over time, the buy/sell rules as well as other slot regulations have been administered by the FAA on a procedural basis that ignores marketplace changes. As a result, the rule supports the status quo which allows the few carriers that were originally grandfathered slots to decide whether to utilize the slots they were given without charge by the government or to transfer (by sale or lease) the slots they hold. Some carriers have leased slots for years! Unfortunately, the Department has allowed those transactions to take place without any oversight. As a result, the large carriers are the ones

making decisions concerning entry or expansion at DCA. Since the institution of the buy/sell rule, a few new entrants have been able to obtain slots and enter DCA and LGA, however, these carriers have not been able to expand operations or been allowed to operate on a level playing field.³ It is time for a change. It is time to overhaul the rules consistent with the principles of deregulation and sound public policy.

The buy/sell rule protects incumbents; it does not encourage entry or competition. If a carrier desires to lease or to sell slots it has been provided by the government, the buy/sell rule contains no requirement for the slot-holding carrier to advise the government, the public and all carriers of:

- its intent to lease or to sell the slots;
- the details of the sale or lease agreement; and
- which carriers were given the opportunity to obtain the slots.

Instead, the slot-holding carrier is permitted to act in total secrecy, deciding which carrier(s) it will compete with and which carrier(s) will not be allowed to compete. For all practical purposes, over the years this has produced a form of government sponsored market allocation permitting the FAA protected carriers to charge premium fares without fear of competitive response. The consumer pays while steps to promote competition are delayed.

³ New entrants that have obtained slots under AIR-21 or Vision 100 are blocked from transferring slots. Therefore a carrier with a handful of slots cannot sell or lease slots or even move those slots to a different market they must ask the FAA for approval to transfer even one slot, while a carrier with several hundred slots can do as it wishes with those slots!

The Department has apparently decided that the nation's six largest carriers can decide amongst themselves the future of airline competition at DCA and LGA. Is there any chance that a slot-holding carrier would lease slots to a new entrant carrier that wants to compete with that carrier? Would an alliance partner lease slots to low-fare a carrier that could add service in a market under the control of its alliance partner? Of course not. A review of recent slot transactions demonstrates that carriers obtaining slots from other large slot holders do not enter markets served by the original slot holding carrier or its alliance partners.

Numerous government studies and reports have demonstrated that the buy/sell rule serves to preserve the stranglehold that a few large carriers have over high-density airports.⁴ As the General Accounting office noted:

...leasing places a nonowner at a competitive disadvantage...leases are sometimes for only a short period of time. Under the use-or-lose provision of the Buy/Sell Rule, airlines must use a slot at least 80 percent of the time or it will be revoked by FAA. Hence, to meet this requirement and still protect slots, the incumbent airlines lease unused slots to other airlines, but only on a short-term basis. At our request, FAA reviewed the leases that were in effect as of July 15, 1996, and found that about 10 percent were for less than 30 days and that another 12 percent were for between 31 and 89 days. While a carrier already operating at an airport may be able to add flights using slots leased for a short term, a new entrant can generally not justify the costs of starting new service if its only access to an airport could be terminated on short notice by a potential competitor.

(US General Accounting Office, Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several key Domestic Markets (GAO/RCED-97-4)(Washington, DC: US General Accounting Office, 1996)pp.6-7.)

The Port Authority of New York and New Jersey noted:

One of the specific problems we have with the HDR is that we do not believe that the buy/sell rule has achieved its purpose of efficiently allocating scarce resources. While slot trading is intended to be part of a pro-competitive policy, it

⁴ US Airways officials have claimed that they should be able to obtain all available DCA slots.

does not ensure new carriers access. In practice, airlines that hold slots at an HDR airport will not make them available to competitors, except under short term lease or at exorbitant prices.

(Docket OST-1998-4025-30)

In comments, dated July 6, 2004, Docket OST-2000-7181, Northwest Airlines stated that “Delta has chosen to return slots to Northwest rather than pay current market rates for them after October 30, 2004.” Therefore, Northwest admits that the slots it leased to Delta will no longer be retained by Delta after October 30 and therefore will be leased or sold to another carrier. As noted by Northwest, it determines the price of entry! If the next Northwest transaction involves US Airways, this slot transaction is particularly disturbing because it involves carriers and their alliance partners controlling DCA:

UNITED/US AIRWAYS	47%
DELTA/NORTHWEST/CONTINENTAL	28%
TOTAL	75%

These carriers control 75% of all DCA slots. How can the Department allow carriers controlling such a large portion of the market work with each other to dominate the market?⁵ As the Department continues to allow carriers such as Northwest to lease or to sell DCA slots to Delta, US Airways, or any other of their alliance partners, dominance at the airport and over

⁵ In October of last year, Continental Airlines expressed “outrage” over a proposed sale of Heathrow slots between dominant carriers: “Continental Airlines today expressed outrage at the newly confirmed reports that British Airways, the dominant airline at London Heathrow, an airport closed to new competition, has continued to purchase the limited number of airport slots available. ‘Over the past few years, British Airways has ruthlessly strengthened its iron grip on Heathrow by purchasing the limited number of slots held by distressed carriers. British Airways continued attempts to close Heathrow to competition should not go unnoticed.’” These same comments apply to DCA.

multiple regions of the country will be locked in place. There is no public interest in letting the nation's largest carriers decide which competitor will be chosen to enter closed markets.

In an appearance before the Senate Commerce Committee, Joel Klein, former Assistant Attorney General, Antitrust Division, U.S. Department of Justice, addressed the government's responsibility to review and challenge the sale of slots if the sale would result in a lessening of competition:

In addition to challenges to mergers and acquisitions of stock, the Division has also challenged acquisitions of assets that it concluded would be competitively problematic. The Division has moved to block acquisition of gates or slots when it thought such acquisitions would lessen competition, as demonstrated by its challenges to Eastern's proposal in 1989 to sell gates to USAir at the gate-constrained Philadelphia International Airport and Eastern's proposal in 1991 to sell slots and gates at Reagan Washington National Airport to United.

[July 27, 2000]

Decisions as to whether competition will exist is a responsibility of the Department, not Northwest or US Airways. Does the Department somehow believe that passengers seeking flights to DCA do not need low fares or choices? Is there some reason why the Department believes it must allow US Airways to grow while continuing to block new entry at DCA? What is the role of the ATSB (with its interest in US Airways' slots) and the PBGC (with its interest in Northwest's slots) in this latest slot transaction?⁶

It was not the intent of those who deregulated the airline industry to allow a few large carriers to replace the Civil Aeronautics Board and the Secretary of Transportation and decide

⁶ The Department should disclose all communications from ATSB and PBGC involving high-density slots. Although asked about these relationships, to date, the Department has not released any information concerning ATSB's or PBGC's rights to slots

who can enter DCA. It is time to open all doors and provide full public scrutiny of slot transfer actions.⁷ As the Department and FAA have repeatedly stated, slots do not belong to the carriers and can be withdrawn by the FAA and reallocated.

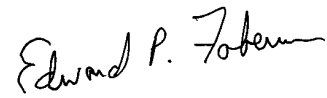
Proposed Transfers Should Be Frozen

It is critical that the FAA and the Department prevent carriers from engaging in market manipulation and anti-competitive behavior. Therefore the Department and FAA should block any further sale or lease of slots at DCA or LGA by Northwest or any other legacy carrier to US Airways, Delta, or any other legacy carriers. It is time for the Department to put an end to this secret and exclusionary selection process.

WHEREFORE, ACAA respectfully requests that the Department immediately suspend the transfer by Northwest of slots to Delta, US Airways, or any other legacy carrier and that those slots be made available to new entrants. The Department also needs to thoroughly investigate all slot transactions between major carriers, and to establish a public process identifying all slot transactions. US Airways and the few other carriers that already dominate DCA should not be allowed to increase their stranglehold over markets, travelers and the entire industry through the secret transfer of slots.

⁷ In response to a letter sent by the ACAA to FAA in September 2000, raising some of these same points, FAA claimed that although the issues raised had merit, the FAA was “too busy” to address these issues. It is now time!

Respectfully submitted,



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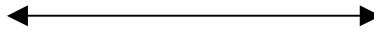
July 7, 2004

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Petition of the Air Carrier Association of America to Suspend the Transfer or Lease Slots at Ronald Reagan Washington National Airport by e-mail on July 7, 2004 to each of the persons listed below.

Joseph P. Frick

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